

INITIAL STATEMENT OF REASONS

SECTIONS 1172.90 and 1172.92

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS.

Former Code of Civil Procedure section 1577 states a holder of escheated/unclaimed property that fails to timely report, pay, or deliver the property to the State Controller's Office as required by the California Unclaimed Property Law (Code of Civil Procedure section 1500 et seq.) shall pay interest at 12 percent per annum on the value of the property. However, Code of Civil Procedure section 1577 was amended by Assembly Bill 378 (Chapter 304, section 5, of the Statutes of 2003) and now exempts holders from liability for interest where the failure to timely report, pay or deliver the property was due to "reasonable cause." The term "reasonable cause" is undefined in the Unclaimed Property Law.

SPECIFIC PURPOSE OF THE REGULATION

These proposed regulations would provide technical clarity to existing law by defining the term "reasonable cause" as used in Code of Civil Procedure section 1577, and what circumstances may or may not be acceptable as reasonable cause. In addition, the proposed regulations inform the holders of unclaimed property of their burden of proving reasonable cause and how a claim for reasonable cause should be set forth.

RATIONALE/NECESSITY

Currently, there are no statutes or regulations that define the term "reasonable cause" in the Unclaimed Property Law. The proposed regulations are needed to define "reasonable cause" and to indicate what circumstances or conditions may or may not be acceptable as reasonable cause. In addition, the proposed regulations will set forth how holders may make a claim of reasonable cause, and inform holders of the burden of proving reasonable cause.

Section 1172.90. Reasonable Cause - Defined

Subsection (a) – This section clarifies that the assessment of interest is mandatory unless there is a showing of reasonable cause for the delay.

Subsection (b) – This section defines the term "reasonable cause" as the exercise of ordinary care.

Subsection (b)(1) & (2) – These sections state specific causes that will be accepted as reasonable.

Subsection (c) – This section clarifies that reliance on an agent is generally not reasonable cause.

Section 1172.92. Burden of Proof

Subsection (a) – This section clarifies and informs the holders of their responsibility to establish the facts necessary for the State Controller's Office to relieve them of their liability for interest.

Subsection (b) – This section clarifies that holders will set forth their claim for reasonable cause in an affidavit or declaration under penalty of perjury.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

Other than a review of the statutes and regulations that use the term “reasonable cause,” the State Controller's Office did not rely upon any technical, or empirical studies, reports or documents in proposing the adoption of this regulation.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the State Controller's Office.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The State Controller's Office has not identified any alternative that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations are intended to clarify and fully implement existing law. They are intended to clarify the term “reasonable cause” and the basis on which a holder of unclaimed property can set for claim of reasonable cause. The regulations have no significant adverse economic impact on any business and only make clear how and when a person or entity can claim relief from the liability for interest under Code of Civil Procedure section 1577.